

April 14, 2014

Certified Mail
Return Receipt Requested

Ms. Leslie Blake
United States Environmental Protection Agency - Region 5
Superfund Division (SR-6J)
77 West Jackson Boulevard
Chicago IL 60604-3590

Re: Gary Development Landfill
General Notice of Liability letter to Rexam Beverage Can Company

Dear Ms. Blake:

On behalf of Rexam Beverage Can Company (Rexam), we are responding to the General Notice of Liability letter (GNL) respecting the Gary Development Landfill (GDL) issued on March 28th by USEPA.

Based on a conversation with Regional Counsel Jeffrey Cahn, it is Rexam's understanding that the GNL was issued to it as the alleged successor of American Can Company (ACC), and that the alleged nexus between ACC and GDL is as follows: USEPA asserts that ACC shipped waste materials to the American Chemical Services (ACS) Site between 1976 and 1981 for treatment, and that after treatment by ACS, residuals and/or portions of the waste that could not be further treated were then shipped by ACS to GDL for disposal. It is Rexam's further understanding that the assertion of this connection is based on documents provided to USEPA by ACS that USEPA in turn provided to us on April 8, 2014.

It is our further understanding that all of the other parties to whom the March 28th letter was directed are similarly situated: i.e., they were all identified as PRPs based on the assertion that they sent waste to ACS for treatment, and that post treatment residuals or untreated portions of their waste were then transported by ACS to GDL for disposal.

Finally it is our understanding that: (a) there is a group of GDL PRPs that have a 'direct' nexus to GDL (as contrasted with an asserted trans-ship nexus) who are negotiating an AOC or CD to conduct an RI/FS or other activities at GDL; (b) that ACS is one of those PRPs that is expected to participate; and (c) that the USEPA is not looking to Rexam or other alleged ACS 'trans-ship' parties to participate in that AOC or CD at this time. Rather it is our understanding that the Agency currently views Rexam and the other purported ACS trans-ship parties' alleged responsibility as being subsumed within that of ACS itself, and that the Agency anticipates that the asserted ACS trans-ship parties will engage in discussions with ACS directly about possible participation in the ACS alleged share of responsibility.

As an initial matter, based on review of the ACS records provided by EPA, Rexam disputes the assertion that Rexam is successor to the obligations of ACC for all of the alleged shipments from ACC facilities to ACS.

Rexam also seriously questions whether ACS can prove that it shipped a particular customer's post treatment residuals or portions of untreated waste to GDL during the period 1976-1981. Even if it could establish actual facts to prove that it shipped residuals from waste connected to Rexam to GDL during that period, Rexam has further defenses to any asserted CERCLA trans-ship liability, including but not limited to the following: ACS apparently generated the specific residual wastes in question during the relevant period; ACS selected the GDL facility for treatment and/or disposal of the wastes it generated as a result of its own treatment process during that period; ACS alone arranged for transport of any such wastes it generated to the GDL facility for treatment and/or disposal during that period; Rexam and/or its predecessors had no involvement in the selection of GDL by ACS; Rexam and/or its predecessors had no involvement in the transport of any wastes by ACS to GDL; Rexam and/or its predecessors had no intent to arrange for disposal of any wastes at GDL.

Based on these and other available defenses, Rexam expressly denies liability, and nothing in this response shall be construed as an admission of any matter of fact or law by any of the participating companies.

Nonetheless, subject to the foregoing, in good faith Rexam is willing to participate in negotiations regarding the trans-shipment issues with ACS, with or without EPA involvement.

If you have any questions, please contact the undersigned.

Yours truly,


Bruce White

cc:

Jamie Kiser

Joshua Markus